JUDGE CASTEL

14 CV 0127

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT CHEN, QIANGGUO HU, ROSALIND HOANG and RAGHU CHETLAPALI, Plaintiffs, -against- INCAPTURE TECHNOLOGIES, LLC, PETER KNEZ, BRENT CANADA and ALAN MOORE, Defendants.	**COMPLAINT** **Jury Trial Demanded**

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CASHIERS

Plaintiffs, Robert Chen, Qianhhuo Hu, Rosalind Hoang and Raghu Chetlapali, by their attorneys, The Law Offices of Russell E. Adler PLLC, for their complaint against defendants Incapture Technologies, LLC, Peter Knez, Brent Canada and Alan Moore allege as follows:

THE PARTIES

1. Plaintiff Robert Chen is an individual residing in New York.

2. Plaintiff Qiangguo Hu is an individual residing in New Jersey.

3. Plaintiff Rosalind Hoang is an individual residing in New York.

4. Plaintiff Raghu Chetlapali is an individual residing in New York.

5. Plaintiffs are all former Incapture employees.

6. Plaintiffs are all of Asian descent.

7. Defendant Incapture Technologies LLC ("Incapture") is a Delaware limited liability company with its principal place of business located at 183 Madison Avenue, Suite 801, New York, New York 10016. Incapture is a cloud-based computer technology company.

8. Upon information and belief, Incapture employees 15 or more employees who worked for at least 20 weeks in calendar year 2012 and/or 2013.

9. Defendant Peter Knez is Incapture's Chief Executive Officer. Mr. Knez is Caucasian.

10. Defendant Brent Canada is Incapture's Chief Operating Officer. Mr. Canada is Caucasian.

11. Defendant Alan Moore is Incapture's Chief Technology Officer. Mr. Moore is Caucasian.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action under 42 U.S.C. § 2000e, 42 U.S.C. § 1981 and 28 U.S.C. §§1331 and has supplemental jurisdiction over plaintiffs' state and city law claims pursuant to 28 U.S.C. §1367.

13. Venue is proper in this district under 28 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to plaintiffs' claims occurred in the Southern District of New York.

FACTS

14. Plaintiff Robert Chen commenced employment with Incapture on or about March 26, 2012. Mr. Chen was employed as a senior product investment specialist.

15. Plaintiff Qiangguo Hu commenced employment with Incapture in or about December 2011. Mr. Hu was employed as a senior cloud software engineer.

16. Plaintiff Rosalind Hoang commenced employment with Incapture on or about March 22, 2012. Ms. Hoang was employed as a junior analyst.

17. Plaintiff Raghu Chetlapali commenced employment with Incapture on or about April 1, 2012. Mr. Chetlapali was employed as an investment engineer.

18. Plaintiffs were originally hired at Incapture by Incapture's former Chief Information Officer, Richard Thompson.

19. Mr. Thompson also hired Betty Ho and Karen Wang-Sotomayor, also of Asian descent, as well as two Caucasian employees, Rice Naylor and Claude Gauthier.

20. Plaintiffs did not receive any adverse performance reviews during their employment.

21. Due at least in part to the Plaintiffs' diligent efforts, Incapture was able to present a

successful demonstration of Incapture's software product to a significant client in June 2012. As a result, a second product demonstration was scheduled for mid-September 2012.

22. Shortly before the second product demonstration, the Plaintiffs were systematically excluded from meetings and discussions regarding the upcoming demonstration. Plaintiffs were also excluded from the second product demonstration.

23. Upon information and belief, the second product demonstration was successful and, as a result, Incapture secured additional funds from the client.

24. Shortly after the second product demonstration, Ms. Hoang and Mr. Chetlapali were asked to provide details regarding their work to other Incapture employees regarding, for example, source codes, documentation, concepts and methods used. In addition, Plaintiffs were directed by Incapture to provide additional information regarding their past work to Incapture.

25. On or about October 1, 2012, Plaintiffs, along with Karen Wang-Sotomayor and Betty Ho, both of whom were also of Asian descent, were called into a meeting with Defendant Canada and told that they were all being terminated effective immediately.

26. Defendants did not identify to Plaintiffs any performance deficiencies or lack of skills or experience that precipitated their respective terminations of employment.

27. Defendant Canada also threatened to enforce post-employment restrictive covenants against Plaintiffs.

28. During the October 1, 2012 meeting, plaintiffs were told that Mr. Thompson departed the company.

29. The two Caucasian employees hired by Mr. Thompson, Rice Naylor and Claude Gauthier, were not terminated and, upon information and belief, remain employed by Incapture.

30. Plaintiffs' possessed equal or superior skills and/or experience than their Caucasian counterparts whose employment was not terminated.

31. Upon information and belief, Brent Canada, Peter Knez and Alan Moore were

consulted, participated in, approved and/or condoned the decision to terminate Plaintiffs' employment.

32. Incapture did not have any employee handbook, equal employment opportunity policy or anti-discrimination policies in place at the time of plaintiffs' terminations.

FIRST CAUSE OF ACTION
Race Discrimination – 42 U.S.C. § 2000e, ("Title VII")
Against Incapture

33. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

34. Plaintiffs are all of Asian descent and, therefore, members of a protected class.

35. Plaintiffs were each qualified to hold their positions with Incapture.

36. Plaintiffs' termination of employment occurred under circumstances giving rise to an inference of race discrimination in that similarly situated non-Asian colleagues were not terminated when Plaintiff's employment was terminated.

37. Plaintiffs timely filed charges of discrimination with the EEOC.

38. Plaintiffs commenced this action within 90-days of receipt of their Notices of Right to Sue.

39. By virtue of the foregoing, Defendants engaged in unlawful race discrimination in violation of Title VII.

SECOND CAUSE OF ACTION
Race Discrimination – 42 U.S.C. § 1981 ("§ 1981")
Against All Defendants

40. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

41. Plaintiffs are all of Asian descent and, therefore, members of a protected class.

42. Defendants intentionally terminated Plaintiffs employment based on their race as

demonstrated by, among other things, the retention of similarly situated non-Asian employees Rice Naylor and Claude Gauthier.

43. Plaintiffs race was a motivating factor in Plaintiff's selection for termination of employment.

THIRD CAUSE OF ACTION
Race Discrimination – New York State Executive Law § 290 et seq. ("NYSHRL")
Against All Defendants

44. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

45. By virtue of the foregoing conduct, Defendants engaged in unlawful race discrimination in violation of the NYSHRL.

FOURTH CAUSE OF ACTION
Race Discrimination – New York City Human Rights Law ("NYCHRL")
Against All Defendants

46. Plaintiffs repeats and reallege the allegations set forth above as though fully set forth herein.

47. By virtue of the foregoing conduct, Defendants engaged in unlawful race discrimination in violation of the NYCHRL.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

a. costs and expenses of this action, together with Plaintiffs attorney's fees;

b. back pay, front pay, compensatory damages, and punitive damages to the maximum amount permitted by law; and

c. Such other and further relief as this Court deems just and proper.

Dated: January 9, 2014
New York, New York

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